



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request that City Join Amicus Brief in Warren v. City of Carlsbad (9th Cir., 1995; 58 F.3d 439)

MEETING DATE: October 04, 1995

PREPARED BY: Deputy City Attorney

RECOMMENDATION: That the city join the amicus brief for Warren v. City of Carlsbad (9th Cir., 1995; 58 F.3d 439)

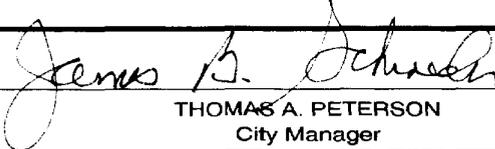
BACKGROUND: For purposes of information, *amicus curiae* briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court.

This case arose when a municipal firefighter brought suit in U. S. District Court alleging that the city had violated Title VII of the Civil Rights Act when it failed to promote him to the position of captain because he was Hispanic.

The city prevailed on summary judgment because the plaintiff had failed to establish a prima facie case of discriminatory failure to promote. In fact the plaintiff admitted that he had no evidence that the supervisors responsible for awarding the promotion knew he was Hispanic. Also, the court found that the plaintiff's disabling psychiatric condition, which included "intense homicidal ideas" toward the fire chief, and the fact that other more qualified candidates had applied eliminated any finding of discriminatory pretext. The trial court also awarded sanctions to the city in the amount of \$10,000.00 because the case was found to be frivolous.

In late June 1995, the Ninth Circuit reversed the District Court decision, finding the plaintiff had produced "evidence of facts" demonstrating a discriminatory motive or pretext. This evidence included (1) statistics showing that only two non-white men work in the department and that during the last 19 years only one captain had been a member of a minority group, (2) that the plaintiff had allegedly heard one derogatory comment regarding Hispanics, (3) that the candidates were selected for promotion based on subjective criteria from a list of several "qualified" candidates.

APPROVED: _____


THOMAS A. PETERSON
City Manager

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This decision indicates that minimal evidence of discrimination will be sufficient to send cases to trial even in the face of overwhelming defense evidence that precludes the possibility of discrimination. This position is contrary to recent Supreme Court authority that directly addresses the issue of the quantum of evidence needed by a plaintiff to meet his or her burden of proof and to carry the burden of persuasion in a Title VII case.

A Supreme Court decision bringing the Ninth Circuit back in line with Supreme Court precedent on this issue will enable cities to dispose of these frivolous employment discrimination cases by way of summary judgment. This will help keep defense costs down and prevent the filing of further frivolous suits.

FUNDING: Not applicable.

Respectfully submitted,



John M. Laebberke
Deputy City Attorney



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Clarification of the Council Communication regarding the request that City Join Amicus Brief in Warren v. City of Carlsbad (9th Cir., 1995; 58 F.3d 439)

MEETING DATE: October 04, 1995

PREPARED BY: Deputy City Attorney

RECOMMENDATION: That the city join the amicus brief for Warren v. City of Carlsbad (9th Cir., 1995; 58 F.3d 439)

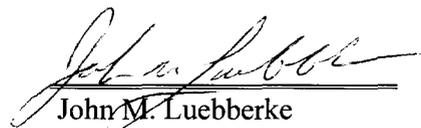
BACKGROUND: The City of Carlsbad, through the League of California Cities Legal Advocacy Committee, has requested that the City support it in its efforts to convince the United States Supreme Court to overturn the Ninth Circuit's decision in Warren v. City of Carlsbad.

The Ninth Circuit's decision in this matter opens the door to frivolous litigation. Basically, cities could be forced to go all the way to trial to resolve employment discrimination cases even when the plaintiff has presented very little evidence that discrimination may have taken place.

The City of Carlsbad is seeking to overturn this decision and thereby restore a City's ability to get out of these meritless cases by way of summary judgment prior to expending large sums of money at trial.

FUNDING: Not applicable.

Respectfully submitted,


John M. Luebberke
Deputy City Attorney

APPROVED: _____

THOMAS A. PETERSON
City Manager